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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,401	07/11/2003	Charles F. Fritter	430.180	5520
27019	7590	11/15/2005	EXAMINER	
THE CLOROX COMPANY 1221 BROADWAY PO BOX 2351 OAKLAND, CA 94623			SMITH, KIMBERLY S	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,401

Applicant(s)

FRITTER ET AL.

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 109-197 is/are pending in the application.
- 4a) Of the above claim(s) 109-185 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 186-197 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 2/10/05, 11/06/03, 2/21/05

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of invention I in the reply filed on 08/24/05 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 109-185 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 08/24/05. The Applicant is noted at page 2 of the response filed August 24, 2005 that claims 1-75, 80 and 81 read on the elected species. However, these claims have been cancelled. Aside from that fact, the Applicant's have elected a core material being expanded perlite. However, as the core material is claimed in claim 24 as being an absorbent core and in claim 25 as being a non-absorbent core, it is clearly shown that the election does not in fact read on all the listed species. As such, the only election ascertained in the response of August 24, 2005 to be commiserate with the scope of the elected invention is that at page 15 stating "new claims 186-197 which read on the elected species...". As such, claims 186-197 are currently under prosecution. Claims 109-185 have been withdrawn from consideration as being drawn to a nonelected invention.

Information Disclosure Statement

3. The information disclosure statement filed 02/10/05 and 11/06/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information

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or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

4. The information disclosure statement filed 02/10/05 and 11/06/03 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

5. It is noted the claims listed in the response dated August 24, 2005 included improper dependency. The Applicant's submitted a listing of claims with corrected dependency on October 21, 2005 of which the following Office Action is based.

Specification

6. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 196 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what non-agglomerated mixture the applicant is using as a reference point? It is impossible for one having skill in the art to ascertain the metes and bounds of the claim language.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 186, 187, 191-194, 196 and 197 are rejected under 35 U.S.C. 102(b) as being anticipated by Peleties, US Patent 5,638,770.

Peleties discloses a composite particle comprising a mixture of bentonite and expanded perlite formed into a plurality of homogeneously agglomerated composite particles (reference column 2, lines 36-40) wherein each particle inherently contains a percentage of bentonite and a percentage of expanded perlite.

Regarding claim 187, Peleties discloses a particle further comprising at least one performance-enhancing active (column 1, lines 63-65) inclusive of an odor absorbent.

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Regarding claims 191 and 192, Peleties discloses the particles range in size from 100 μm to 10mm and from 400-1650 μm (column 2, lines 49-51).

Regarding claims 193 and 194, Peleties discloses the particles have a bulk density less than 1.5g/cc and more particularly between 0.25-0.85 g/cc (column 1, line 56).

Regarding claim 196, Peleties discloses inherently that the composite particles exhibit reduced sticking (reference column 2, lines 34-66).

Regarding claim 197, Peleties discloses further comprising a fragrance (as it is stated at column 1, line 63 that the litter material may include one *or more* of perfumes, deodorants, odor absorbents (i.e. activated charcoal), etc.)

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 195 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peleties, US Patent 5,638,770.

Peleties discloses the invention substantially as claimed. However, Peleties does not disclose the bulk density is between 0.35-0.5 g/cc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bulk density fall between 0.35-0.5 g/cc since it has been held that where routine testing and general experimental

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conditions are present, discovering the optimum or workable value/ranges until the desired effect is achieved involves only routine skill in the art.

13. Claims 188-190 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peleties, US Patent 5,638,770 in view of Preti et al., US Patent Application Publication US 2002/0046710 (Preti).

Peleties discloses the invention substantially as claimed including the particle comprising at least one performance-enhancing active. However, Peleties does not positively disclose the performance-enhancing active. Preti teaches within the same field of endeavor the use of powdered activated carbon, present in about 5 weight percent or less, for the purpose of inhibiting odor of litter matter. It would have been obvious to one having ordinary skill in the art to use the powdered activated carbon as taught by Preti as the at least one performance-enhancing active of Peleties in order to help reduce the animal waste malodor.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 186-197 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 10/861,044. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the conflicting application does not claim the limitations regarding the specific bulk densities, it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable value/ranges until the desired effect is achieved involves only routine skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lawson, US 5,295,456 and Lawson US 5,303,676.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith
Examiner
Art Unit 3644

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A handwritten signature in black ink, appearing to read 'Teri Pham Luu', with a stylized flourish at the end.

**TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER**